

Telephone: 0131-244 7187

Fax: 0131-244 0463

Email: [alastair.wilson@scotland.gsi.gov.uk](mailto:alastair.wilson@scotland.gsi.gov.uk)

Joe Durkin  
Partner  
Eversheds LLP  
One Wood Street  
London  
EC2V 7WS

14 December 2009

Dear Joe,

## HARBOURS ACT 1964 – LOCH RYAN PORT HARBOUR EMPOWERMENT ORDER

I refer to the application submitted on behalf of your client, Stena Line Ports (Loch Ryan) Limited (“the Company”) on 15 January 2009 for the making of the Loch Ryan Port Harbour Empowerment Order (“the HEO”) under section 16 of the Harbours Act 1964 (“the 1964 Act”). This letter conveys the Scottish Ministers’ decision on this application.

### Application

The Company submitted an application to the Scottish Government on 15 January 2009. An environmental statement (“the ES”) was submitted along with the application.

Notice of the application for the HEO was advertised in the Stranraer and Wigtonshire Free Press on 22 and 29 January 2009, the Galloway Gazette on 23 January 2009 and in the Edinburgh Gazette on 29 January 2009.

Scottish Ministers received four objections to the application. Representations on the Environmental Statement were received from bodies consulted under paragraph 15 of part 1 of Schedule 3 of the 1964 Act and also by way of comments from P&O European Ferries.

### Objections

Objections were received from two individual residents of the village of Cairnryan and from Loch Ryan Shellfish and the Loch Ryan Sea Angling Association. The objections made by the residents and Loch Ryan Sea Angling Association were subsequently withdrawn. The Scottish Ministers considered that the remaining objection could be handled by written

representations and that a public enquiry or hearing was not required. Following further correspondence this objection was also withdrawn.

## Consultation

Comments were received from Dumfries and Galloway Council, who supported the proposed Order subject to full adherence with the commitments made in the ES; the Company entering into a Deed of Undertaking with the Council and making an application for prior construction consent under Section 61 of the Control of Pollution Act 1974 in relation to the construction works. They confirmed that the ES thoroughly and fairly assessed a wide range of issues and included appropriate mitigation commitments. They also recognised that the Deed of Undertaking prepared by the applicants would address all outstanding issues. The Deed of Undertaking was subsequently signed on 20 April 2009.

Scottish Natural Heritage ("SNH") confirmed that they had a number of detailed discussions with the company's consultants during the development of the ES and were content that their concerns had been fully addressed within the document.

Scottish Environmental Protection Agency ("SEPA") made a variety of comments regarding controls on dredging and pollution. Further consultation with the company and their consultants took place and SEPA confirmed they were satisfied that the issues raised in their formal response to the Loch Ryan Port HEO had been addressed and clarified by the company's environmental consultant and that furthermore the company had accepted that additional and ongoing discussion with SEPA would duly take place with regard to all outstanding legislative matters including any consents required under The Water Environment (Controlled Activities) Regulations 2005 (as amended) (CAR).

Correspondence was also received from P&O who made a variety of comments for consideration by the Scottish Ministers and where appropriate by other bodies. P&O considered the port name "Loch Ryan Port" to be inappropriate and confusing for the customer as the current port operations in Loch Ryan were, in their view, collectively known as the Loch Ryan Ports. P&O currently operate from Cairnryan and Stena from Stranraer. It is not considered a matter for the Scottish Ministers to comment on the names used by commercial undertakings. P&O also commented on discussion they had had with Transport Scotland regarding the impact of the new port on the surrounding roads and in particular to traffic management issues at the entrance to their port at Cairnryan. This comment has been taken into account when making this decision. P&O also expressed concerns over navigational matters which the Scottish Ministers consider have been addressed by Stena in regard to creating a new channel to the port and their commitment to continue the existing liaison arrangements through the Loch Ryan Ferry Navigation Committee on which both parties are represented.

## Additional environmental information

Before a decision was made on the making of the order the applicant indicated that they had undertaken additional investigations of the seabed conditions and wished to submit the results as an addendum to the ES. This addendum was supplied on 14 September and the Scottish Ministers considered it to be information falling under the requirements of paragraph 10A of part 1 of Schedule 3 of the 1964 Act which had to be assessed in order to determine the environmental impacts of the project. A public notice advising of the information was published in the Galloway Gazette on 18 and 25 September, the Stranraer and Wigtownshire

Free Press on 17 and 24 September and the Edinburgh Gazette on 18 September. During the 42 day consultation period no representations were received.

## **Purpose of the HEO**

The primary purpose of the HEO is to empower the Company to construct, operate and maintain a port at Old House Point on Loch Ryan and to confer powers on the Company to operate as a statutory harbour authority, to define those powers and to define the limits of jurisdiction of the Company.

## **Scottish Ministers' Decision**

The Scottish Ministers have carefully considered:

- (a) the ES and the Addendum to the ES;
- (b) the results of the consultations with Dumfries and Galloway Council, SNH and SEPA .

Section 16 of the 1964 Act sets out the objectives for the achievement of which a harbour empowerment order may be made. The Scottish Ministers are satisfied that this HEO meets these objectives, being the construction of an artificial harbour navigable by seagoing ships and the improvement and maintenance of the harbour so constructed.

The Scottish Ministers are also satisfied that making the HEO is desirable in the interests of facilitating the efficient and economic transport of goods and passengers by sea.

The Scottish Ministers have decided to make the Loch Ryan Port Harbour Empowerment Order with modifications which do not appear to them to substantially affect the character of the order. The proposed modifications are:-

A revised preamble which updates drafting language and fully narrates the process by which the order was made.

Revisions to Article 3 which reduce the number of sections incorporated from the 1847 Act. The deleted sections are generally historic and are no longer appropriate or duplicate the more modern provisions contained elsewhere in the order. The modification which adds a new article 3(3) omits the proviso to section 65 as this no longer reflects the practice of Her Majesty's Revenue and Customs .

Additional text in article 4(1) to clarify the reference to the deposited plans and to modernise the language in article 4(3) with additional text to include specifically the operation of the new port for the avoidance of doubt.

Substitution of "port" for "works" in the second line of article 7(1) as this is considered the more suitable term in the context of access.

Corrections of the references to plans in articles 16 and 17 and revised coordinates restricting the port limits to the western boundary of the A77 trunk road.

Removal of text in article 19 (2)(b) and the deletion of 2(n) as they are not required.

Additional text in article 33 to include the addendum report to the Environmental Statement.

### **Subject to approval in the Scottish Parliament**

In terms of section 54A of the 1964 Act a statutory instrument which contains a harbour empowerment order authorising the carrying out of work which would constitute a national development is subject to affirmative procedure.

Port developments on Loch Ryan are designated as national developments within the National Planning Framework for Scotland 2.

Consequently the instrument carrying the HEO is, after making, to be laid before the Scottish Parliament and cannot come into force until the Scottish Parliament by resolution, approves it.

### **Right to challenge decision**

The foregoing decision of the Scottish Ministers is final but any person who desires to question the making of the HEO on the ground that there was no power to make the HEO or that a requirement of the 1964 Act was not complied with in relation to the HEO may, within six weeks from the date on which the HEO becomes operative make an application for the purpose to the Court of Session as the case may be.

**A person who thinks they may have grounds for challenging the decision to make the HEO is advised to take legal advice before taking any action.**

### **Availability of decision**

A copy of this letter has been sent to all those who were consulted on the order or who made objections within the objection period and will be published on the Scottish Government website

Yours sincerely

**ALASTAIR WILSON**  
**Deputy Director - Aviation, Ports, Freight & Canals**